

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Vickie Click, as Next of Kin of Charles Ray)
Jones, deceased, and on behalf of the wrongful)
death beneficiaries of Charles Ray Jones,)
Plaintiff,)
v.) No. _____
Kindred Nursing Centers Limited Partnership)
d/b/a Kindred Nursing and Rehabilitation-)
Northhaven; Kindred Healthcare Operating,)
Inc.; Kindred Healthcare, Inc.; Kindred)
Nursing Centers East, LLC; Kindred Hospitals)
Limited Partnership; Kindred Healthcare)
Services, Inc.; and Kindred Rehab Services,)
Inc.)
Defendants)

NOTICE OF REMOVAL

Defendants Kindred Nursing Centers Limited Partnership; Kindred Healthcare Operating, Inc.; Kindred Healthcare, Inc.; Kindred Nursing Centers East, LLC; Kindred Hospitals Limited Partnership; Kindred Healthcare Services, Inc.; and Kindred Rehab Services, Inc. ("Defendants") submit this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and state as follows:

1. On or around January 20, 2017, Plaintiff filed a Complaint styled Vickie Click, Next of Kin of Charles Ray Jones, deceased; and on behalf of the wrongful death beneficiaries of Charles Ray Jones, Plaintiff v. Kindred Nursing Centers Limited Partnership d/b/a Kindred Nursing and Rehabilitation-Northhaven; Kindred Healthcare Operating, Inc.; Kindred

Healthcare, Inc.; Kindred Nursing Centers East, LLC; Kindred Hospitals Limited Partnership; Kindred Healthcare Services, Inc.; Kindred Rehab Services, Inc.; and William R. Sharpe, in his capacity as Administrator of Kindred Nursing and Rehabilitation-Northhaven, Defendants, No. 2-25-17, in the Circuit Court of the Sixth Judicial District for the State of Tennessee at Knoxville, Knox County (the “State Court Action”).

2. On or about February 28, 2017 service of process in the State Court Action was effected upon Defendants Kindred Nursing Centers Limited Partnership; Kindred Rehab Services, Inc; Kindred Nursing Centers East, LLC; Kindred Healthcare Services, Inc.; Kindred Hospitals Limited Partnership; and Kindred Nursing Centers, LLP. On or about March 2, 2017, service of process in the State Court Action was effected upon Defendant William R. Sharpe.

3. On July 11, 2017 Defendant William R. Sharpe, in his capacity as Administrator of Kindred Nursing and Rehabilitation-Northhaven, was dismissed from the State Court Action. This Notice of Removal is filed within thirty (30) days of that dismissal, as required by 28 U.S.C. 1446(b)(3).

4. Defendants file herewith as Collective Exhibit A copies of all pleadings heretofore filed in the State Court Action.

5. This Court has jurisdiction over this cause under 28 U.S.C. § 1332 and 28 U.S.C. § 1441, *et seq.* Upon information and belief, subsequent to the dismissal of Defendant William R. Sharpe, in his capacity as Administrator of Kindred Nursing and Rehabilitation-Northhaven, there currently exists complete diversity of citizenship between the parties. Upon information and belief, Charles Ray Jones was a Tennessee resident at all times relevant to this matter, including from the time he was first admitted to Kindred Nursing and Rehabilitation-Northhaven until his death. (Complaint, ¶ 2). Upon information and belief, Plaintiff Vickie Click is a

resident of Tennessee. (See correspondence dated November 9, 2016 included in Exhibit A to the Complaint).

6. Upon information and belief, the defendants are not residents of Tennessee as evidenced by:

(a) Kindred Nursing Centers Limited Partnership¹ is a Delaware limited partnership with its principal place of business in Kentucky. The general and limited partners are Kindred Hospitals Limited Partnership (1% general partner) and Kindred Nursing Centers East LLC (1% general partner and 98% limited partner); Please see sub-paragraphs (d) and (e) herein.

(b) Kindred Healthcare Operating, Inc. is a Delaware corporation with its principal place of business in Kentucky.

(c) Kindred Healthcare, Inc. is a Delaware corporation with its principal place of business in Kentucky.

(d) Kindred Nursing Centers East, LLC is a Delaware limited liability company with its principal place of business in Kentucky. Its sole member is Kindred Healthcare Operating, Inc., a Delaware corporation.

(e) Kindred Hospitals Limited Partnership is a Delaware limited partnership with its principal place of business in Kentucky. The general and limited partners are Kindred Hospitals West, LLC (1% general partner and 98% limited partner) and Kindred Nursing Centers Limited Partnership (1% general partner).

(f) Kindred Healthcare Services, Inc. d/b/a Kindred Nursing and Rehabilitation - Northhaven is a Delaware corporation with its principal place of business in Kentucky.

¹ This entity was improperly named in the case caption and Complaint as Kindred Nursing Centers Limited Partnership d/b/a Kindred Nursing and Rehabilitation Northhaven.

(g) Kindred Rehab Services, Inc. is a Delaware corporation with its principal place of business in Kentucky.

7. Plaintiff is seeking punitive and compensatory damages in an unspecified amount but challenges the constitutionality of and seeks to remove the caps on damages as set forth in Tenn. Code Ann. § 29-39-101, *et seq.* (Complaint, ¶¶ 61-65; Prayer for Relief). The caps on damages as set forth in Tenn. Code Ann. § 29-39-101, *et seq.* exceed this Court's minimum jurisdictional limit of \$75,000.² Therefore, it is facially apparent that the damages sought by Plaintiff exceed the jurisdictional limit of \$75,000.

Defendants file herewith as Collective Exhibit B copies of the notices of removal that are being sent to Plaintiff's counsel and to the Clerk of the Circuit Court of the Sixth Judicial District for the State of Tennessee, from which this case is sought to be removed.

Defendants pray that this cause proceed in this Court as an action properly removed hereto.

DATED: July 18, 2017.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
By: s/ Summer H. McMillan
Harry P. Ogden (BPR # 004498)
Summer H. McMillan (BPR # 020296)
265 Brookview Centre Way, Suite 600
Knoxville, TN 37919
(865) 549-7000 - telephone
(865) 525-8569 - facsimile
hogden@bakerdonelson.com
smcmillan@bakerdonelson.com

Attorneys for Defendants

² "Compensation for any noneconomic damages suffered by each injured plaintiff not to exceed seven hundred fifty thousand dollars (\$750,000)." Tenn. Code Ann. § 29-39-102(a)(2).

"Punitive or exemplary damages shall not exceed an amount equal to the greater of: (A) Two (2) times the total amount of compensatory damages awarded; or (B) Five hundred thousand dollars (\$500,000)." Tenn. Code Ann. § 29-39-104(a)(5).

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2017 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

A true and exact copy of the foregoing document has also been served upon the following:

Cameron C. Jehl, Esq.
Carey L. Acerra, Esq.
Jehl Law Group, PLLC
5400 Poplar Avenue, Suite 250
Memphis, TN 38119

by placing the same in the United States Mail, first-class postage prepaid on this 18th day of July, 2017.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: s/ Summer H. McMillan